TUN DR MAHATHIR MOHAMAD & ORS v. DATUK AZHAR AZIZAN HARUN & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD KAMAL MD SHAHID J
[ORIGINATING SUMMONS NO: WA-24-37-07-2020]
31 JANUARY 2021

CONSTITUTIONAL LAW: *Parliament – Privileges and immunities – Appointment of Speaker and Deputy Speaker of Dewan Rakyat – Validity of election process – Whether could be questioned by courts – Whether validity of proceeding in Parliament and Legislative assembly justiciable – Whether Parliament determines removal and election of Speaker and Deputy Speaker – Whether Dewan Rakyat acted within powers conferred by Federal Constitution and Standing Orders of Dewan Rakyat – Whether Parliament ultimate arbiter of any proceeding in Parliament – Federal Constitution, arts. 57 & 63(1)*

CIVIL PROCEDURE: *Striking out – Application for – Application to strike out originating summons seeking orders that appointment of Speaker and Deputy Speaker of Dewan Rakyat unconstitutional – Validity of election process of Speaker and Deputy Speaker – Whether could be questioned by courts – Whether validity of proceeding in Parliament and Legislative assembly justiciable – Whether Parliament determines removal and election of Speaker and Deputy Speaker – Whether Dewan Rakyat acted within powers conferred by Federal Constitution and Standing Orders of Dewan Rakyat – Whether Parliament ultimate arbiter of any proceeding in Parliament – Federal Constitution, arts. 57 & 63(1)*

The plaintiffs, Members of Parliament, filed an application by way of originating summons ('OS') ('encl. 1') seeking, *inter alia*, for orders that the appointment of Datuk Azhar Azizan Harun ('first defendant') as the Speaker of the Dewan Rakyat and the appointment of Dato' Sri Azalina Othman Said ('second defendant') as the Deputy Speaker of the Dewan Rakyat were unconstitutional and/or inconsistent and/or contravened art. 57 of the Federal Constitution ('FC') and/or standing order ('SO') 3, 4 and 47 of the Standing Orders of the Dewan Rakyat ('SODR') and/or the rule of law and/or natural justice. On 26 June 2020, the Prime Minister ('Tan Sri Muhyiddin') submitted motions to the then Speaker, YB Tan Sri Dato' Ariff ('Tan Sri Dato' Ariff') to be tabled at the 14th Parliament sitting on 13 July 2020 ('Parliament sitting'). The motions to vacate the post of the Speaker and Deputy Speaker were accepted by Tan Sri Dato' Ariff and were tabled in the Parliament sitting and listed as Motion No. 2 in the order paper ('Motion No. 2') and Motion No. 4 in the order paper ('Motion No. 4'). On 29 June 2020, Tan Sri Muhyiddin submitted two other motions to Tan Sri Dato'

Ariff to be tabled in the Parliament sitting which were the appointment of the first defendant as the new Speaker and the appointment of the second defendant as the new Deputy Speaker. The motions of nominating a candidate for the post of the Speaker and Deputy Speaker were accepted by Tan Sri Dato' Ariff and were tabled in the Parliament sitting and listed as Motion No. 3 in the order paper ('Motion No. 3') and Motion No. 5 in the order paper ('Motion No. 5'). During the tabling of Motion No. 2 on 13 July 2020, the Parliament sitting was presided by Dato' Mohd Rashid Hasnon ('third defendant'). Motion No. 2 was debated by the Members of Parliament and a vote was held. There were 111 votes in favour of Motion No. 2 in contrast to 109 votes against Motion No. 2 and thus the post of Speaker was vacated. The third defendant then sought to proceed with the election of the new Speaker but several Members of Parliament raised point of order and demanded a 14 days period starting from 13 July 2020 as per SO 4(1) of the SODR to propose other candidate(s). The third defendant, however, ruled that the election should proceed as Motion No. 3 had complied with SO 4(1) of the SODR. Being the sole candidate made pursuant to SO 4(1) of the SODR, the first defendant was proclaimed as the new Speaker. In accordance with the SO, the first defendant took his oath, and thereafter took his place as the new Speaker of the Dewan Rakyat. Due to the fact that there was a vacancy for the position of the Deputy Speaker following the resignation of YB Nga Kor Ming as the Deputy Speaker, the Dewan Rakyat then continued with Motion No. 5 *ie*, the election of the second defendant as the Deputy Speaker. Being the sole candidate whose nomination was made pursuant to SO 6(2) of the SODR read together with SO 4(1) of the SODR, the second defendant was proclaimed as the new Deputy Speaker. The plaintiffs then filed an application by way of OS against the defendants essentially seeking to challenge the appointment of the first and second defendants as the Speaker and Deputy Speaker of the Dewan Rakyat. The first, second, third and fourth defendants sought to strike out the OS for being scandalous, frivolous or vexatious and/or an abuse of the process of the court under O. 18 r. 19(1)(b) and/or (d) of the Rules of Court 2012 ('ROC') for the following reasons: (i) the validity of the election process of the first and second defendants in the Dewan Rakyat could not be questioned by this court pursuant to art. 63(1) of the FC; and (ii) as such, the appointment of the first and second defendants as the Speaker and the Deputy Speaker could not be invalidated by this court. The issues that arose were (i) whether the validity of the appointment and/or election process of the first and second defendants as Speaker and the Deputy Speaker could be questioned by the court; and (ii) whether the defendants had acted within the power conferred on them by the FC and SODR.

Held (allowing striking out applications):

(1) The removal of Tan Sri Dato' Ariff as the Speaker and the appointment and/or election of the first and second defendants as the new Speaker and the Deputy Speaker were part of the proceedings of the Dewan Rakyat on 13 July 2020. Article 57 of the FC expressly provides that it is the Parliament which determines the removal and election of the Speaker and Deputy Speaker. Parliament has the power or jurisdiction to elect and/or to dismiss the Speaker and the Deputy Speaker. Hence, the validation of such appointment/dismissal was not within the court's jurisdiction. (paras 41, 57 & 58)

(2) The validity of any proceeding in the Parliament and the Legislative Assembly is not justiciable. The court has no jurisdiction to adjudicate upon the matter. This court could not interfere with what had been decided by Parliament on 13 July 2020 which included the resolution by the Parliament to remove Tan Sri Dato' Ariff as Speaker and to elect the first and second defendants as the new Speaker and the Deputy Speaker. Article 63(1) of the FC prevents this court from examining the matters involving the course of the proceedings of the Parliament on 13 July 2020 given that the Parliament has the power or jurisdiction to elect and/or to dismiss the Speaker. (paras 59 & 60)

(3) Any kind of matter and/or issues concerning the removal and the appointment of Speaker and the Deputy Speaker ought to be examined, discussed and resolved in Parliament. Parliament has exclusive jurisdiction over the matter and it has the absolute right to control its own proceedings. Indeed, the decision of Parliament on 13 July 2020 to remove Tan Sri Dato' Ariff as the Speaker and to appoint the first and second defendants as the new Speaker and the Deputy Speaker was conclusive. (para 61)

(4) The plain and ordinary meaning of SO 4 and 6 of the SODR is that it sets out the procedure for an election, whether or not there has been a vacancy in the office. Upon perusal of the FC, SO of the SODR and relevant cause papers, the Dewan Rakyat as well as the first and third defendants had acted within the powers conferred on them by the FC and the SODR based on the following reasons (i) Motions No. 2 and 4 were submitted by Tan Sri Muhyiddin to the Secretary in writing within the time period imposed by SO No. 27(3) of the SODR; (ii) these motions were accepted by Tan Sri Dato' Ariff and placed on the order paper and the acceptance of these motions were made public by the media; (iii) Motions No. 3 and 5 were submitted by Tan Sri Muhyiddin to the Secretary in writing within the time period imposed by SO 4(1) of the

SODR; and (iv) the first and second defendants being the sole candidate whose nomination was made pursuant to SO 4(1) and 6(2) of the SODR shall be declared without question put pursuant to SO 4(3) of the SODR. Therefore, the third defendant's decision to declare the first defendant as the Speaker, and the first defendant's decision to declare the second defendant as the Deputy Speaker, without debate, were lawful. The third defendant had acted within the powers conferred upon him at all material times. The third defendant had the right to exercise all the powers of a Speaker pursuant to art. 57(3) of the FC and SO 7(2) of the SODR. Therefore, all decisions and rulings made by the third defendant during the Parliament sitting was final and shall not be open to appeal pursuant to SO 43 and 99 of the SODR. (paras 74-77)

(5) Based on SO 99, it was clear that the issue of whether or not the nomination of candidates for the Speaker's and Deputy Speaker's seats was contingent on their pre-existing vacancy was one of interpretation. The power to interpret the SODR fell on the Speaker and his interpretation was final. Motions No. 2, 3, 4 and 5 had been accepted by the then Speaker Tan Sri Dato' Ariff. The right to refuse to table a motion in the Parliament sitting lied with Tan Sri Dato' Ariff pursuant to SO 27(5)(b) of the SODR. Tan Sri Dato' Ariff's approval for the motions to be tabled in the Parliament sitting implied that he had interpreted pre-existing vacancy as being necessary. Thus, Tan Sri Dato' Ariff's interpretation ought to be treated as final as no substantive motion had been moved to challenge such interpretation. (paras 78-80)

(6) The FC and the internal mechanisms within the SODR had removed this court the jurisdiction to decide on any matter that concerned parliamentary proceedings and Parliament is the ultimate arbiter of any proceedings in Parliament. Notwithstanding the above, whether or not the Speaker's ruling was made in accordance with the SODR, it would not amount to a non-abiding with the order of business nor could it be declared invalid. (paras 83 & 84)

(7) The power to dismiss an action summarily under O. 18 r. 19 of the ROC 2012 is a drastic one and should be exercised with great caution. In a plain and obvious case when it is conspicuously clear that the claim on the face of it is obviously unsustainable, the court would have to exercise its discretion in striking out an action. The present case came within the category of a plain and obvious case for the reason that the OS was frivolous and vexatious and an abuse of the process of the court. The action had no prospect to succeed. (paras 87 & 88)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Bradlaugh v. Gossett (1884) 12 QBD 271 ***(refd)***

Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun [2016] 7 CLJ 143 FC ***(refd)***

Fan Yew Teng v. Government of Malaysia [1976] 1 LNS 28 HC ***(refd)***

Kerins v. McGuinness [2019] IESC 11 ***(refd)***

Lim Cho Hock v. Speaker, Perak State Legislative Assembly [1979] 1 LNS 45 HC ***(refd)***

Sivakumar Varatharaju Naidu v. Ganesan Retanam [2009] 1 LNS 979 HC ***(refd)***

Sivakumar Varatharaju Naidu v. Ganesan Retanam [2010] 9 CLJ 825 CA ***(refd)***

Teng Chang Khim v. Badrul Hisham Abdullah & Anor [2017] 9 CLJ 630 FC ***(refd)***

Teng Chang Khim & Ors v. Dato' Raja lderis Raja Ahmad & Ors [2014] 3 CLJ 173 FC ***(refd)***

The Speaker of Dewan Undangan Negeri of Sarawak "Datuk Amar Mohamad Asfia Awang Nassar" v. Ting Tiong Choon & Ors And Other Appeals [2019] 2 CLJ 289 CA ***(refd)***

The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v. Ting Tiong Choon & Ors And Other Appeals [2020] 3 CLJ 757 FC ***(refd)***

Tun Datu Hj Mustapha Datu Harun v. Legislative Assembly of State of Sabah & Ors [1985] 1 LNS 150 HC ***(refd)***

YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener) [2009] 4 CLJ 253 FC ***(refd)***

Yang Dipertua, Dewan Rakyat & Ors v. Gobind Singh Deo [2014] 9 CLJ 577 FC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 57(1), (3), 63(1)

Rules of Court 2012, O. 18 r. 19(1)(b), (d)

For the plaintiffs - Mohd Haniff Khatri Abdulla, Muhammad Rafique Rashid Ali, Akif Rusli & Nurmustanir Md Nor; M/s Law Practice of Rafique

For the 1st & 3rd defendants - Amer Hamzah Arshad, New Sin Yew, Hoe Sue Lu & Lee Yee Woei; M/s AmerBON

For the 2nd & 4th defendants - Tania Scivetti & Syazwani Mohd Zawawi; M/s Scivetti Assocs

Reported by Suhainah Wahiduddin

JUDGMENT

Ahmad Kamal Md Shahid J:

Introduction

[1] The plaintiffs had on 23 July 2020 filed an application by way of originating summons (OS) (encl. 1) seeking, *inter alia*, the following orders:

(i) That the seat of the Speaker of the Dewan Rakyat (Speaker) remain vacant since 13 July 2020;

(ii) That the appointment of Datuk Azhar Azizan Harun as the Speaker is invalid as it is unconstitutional and/or inconsistent and/or contravenes art. 57 of the Federal Constitution (FC) and/or standing order (SO) 3, 4 and 47 of the Standing Order of the Dewan Rakyat (SODR) and/or the rule of law and/or natural justice;

(iii) That the appointment of Dato' Sri Azalina binti Othman Said as the Deputy Speaker of the Dewan Rakyat (Deputy Speaker) is invalid as it is unconstitutional and/or inconsistent and/or contravenes art. 57 of the FC and/or SO 3, 4, 6 and 47 of the SODR and/or the rule of law and/or natural justice;

(iv) That during the proceedings of the Dewan Rakyat, as soon as the motion to vacate the post of the Speaker and/or the Deputy Speaker is approved by the majority of the Members of the Dewan Rakyat, therefore the 14 days period that enables Members of the Dewan Rakyat to propose their candidate for the post of the Speaker and/or the Deputy Speaker starts to run from the date the said motion was approved by the Dewan Rakyat; and

(v) If the seat is vacated during the proceedings of the Dewan Rakyat, the appointment of the Speaker and/or the Deputy Speaker, should proceed with the process of election, debate and voting by the Members of the Dewan Rakyat in order for the appointment to become valid.

[2] In gist, the plaintiffs are requesting this court to make a declaration that the appointment and/or election of the first and second defendants as Speaker and Deputy Speaker is invalid as it is unconstitutional and/or inconsistent with art. 57 of the FC and/or SO 3, 4, 6 and 47 of the SODR.

[3] Subsequently, the first and third defendants together with the second and fourth defendants filed an application dated 7 August 2020 (encl. 9) and 12 August 2020 (encl. 11) respectively seeking an order, *inter alia*, to strike out the whole of the plaintiffs' OS.

[4] The defendants' applications in encls. 9 and 11 are made under O. 18 r. 19 of the Rules of Court (ROC) 2012. There are two general grounds upon which the defendants have grounded their applications. In the first place, the defendants said that the plaintiffs' pleading is scandalous, frivolous and vexatious. Secondly, it is otherwise an abuse of the process of the court. Affidavit evidence is admissible under O. 18 r. 19(1)(b) and (d) of the ROC 2012.

[5] First of all, I will have to deal and resolve in regard to the defendants' application in encls. 9 and 11 in view of the defendants' striking out application.

[6] After detailed considerations, the applications (encl. 9) and (encl. 11), the affidavits, written submissions as well as oral submissions by both parties, I hereby allowed encls. 9 and encl. 11. This judgment contains the full reasons for my decision.

[7] The relevant cause papers before this court are as follows:

(i) OS dated 23 July 2020 (encl. 1);

(ii) Plaintiffs' affidavit in support affirmed by Tun Dr. Mahathir bin Mohamad on 23 July 2020 (plaintiffs' affidavit in support for OS) (encl. 2);

(iii) First and third defendants' affidavit in reply affirmed by Datuk Azhar Azizan Harun on 7 August 2020 (first and third defendants' affidavit in reply for OS) (encl. 8);

(iv) Second defendant's affidavit in reply affirmed by Dato' Sri Azalina binti Othman Said on 12 August 2020 (second defendant's affidavit in reply for OS) (encl. 14);

(v) Fourth defendant's affidavit in reply affirmed by Nizam Mydin bin Bacha Mydin on 12 August 2020 (fourth defendant's affidavit in reply for OS) (encl. 15);

(vi) Notice of application dated 7 August 2020 (first and third defendants' SO application) (encl. 9);

(vii) First and third defendants' affidavit in support affirmed by Datuk Azhar Azizan Harun on 7 August 2020 (first and third defendants' affidavit in support for SO) (encl. 10);

(viii) Notice of application dated 12 August 2020 (second and fourth defendants' SO application) (encl. 11);

(ix) Fourth defendant's affidavit in support affirmed by Nizam Mydin bin Bacha Mydin on 12 August 2020 (fourth defendant's affidavit in support for SO) (encl. 12);

(x) Second defendant's affidavit in support affirmed by Dato' Sri Azalina binti Othman Said on 12 August 2020 (second defendant's affidavit in support for SO) (encl. 13);

(xi) Plaintiffs' affidavit in reply affirmed by Tun Dr. Mahathir bin Mohamad on 17 August 2020 (plaintiffs' affidavit in reply for SO) (encl. 16);

(xii) Plaintiffs' affidavit in reply (2) affirmed by Tun Dr. Mahathir bin Mohamad on 17 August 2020 (plaintiffs' affidavit in reply for SO) (encl. 17);

(xiii) Plaintiffs' affidavit in reply (3) affirmed by Tun Dr. Mahathir bin Mohamad on 17 August 2020 (encl. 18);

(xiv) First and third defendants' affidavit in reply affirmed by Datuk Azhar Azizan Harun on 24 August 2020 (first and third defendants' affidavit in reply for SO) (encl. 20);

(xv) Second defendant's affidavit in reply affirmed by Dato' Sri Azalina binti Othman Said on 24 August 2020 (second defendant's affidavit in reply for SO) (encl. 21);

(xvi) Fourth defendant's affidavit in reply affirmed by Nizam Mydin bin Bacha Mydin on 24 August 2020 (fourth defendant's affidavit in reply for SO) (encl. 22); and

(xvii) Plaintiffs' notice of intention to use affidavit dated 24 August 2020 (plaintiffs' notice of intention to use affidavit for SO) (encl. 19).

Background Facts

[8] The background facts of this case are largely undisputed. At all material times, the plaintiffs are Members of the Dewan Rakyat as follows:

(i) The first plaintiff is the Member of Parliament for Langkawi;

(ii) The second plaintiff is the Member of Parliament for Jerlun;

(iii) The third plaintiff is the Member of Parliament for Simpang Renggam;

(iv) The fourth plaintiff is the Member of Parliament for Kubang Pasu; and

(v) The fifth plaintiff is the Member of Parliament for Sri Gading.

[9] At all material times, the defendants are Members of the Dewan Rakyat as follows:

(i) The first defendant is the Speaker of the Dewan Rakyat who was appointed on 13 July 2020;

(ii) The second defendant is the Deputy Speaker of the Dewan Rakyat who was appointed on 13 July 2020;

(iii) The third defendant is the Deputy Speaker of the Dewan Rakyat who was appointed on 16 July 2018; and

(iv) The fourth defendant is the Secretary of the Dewan Rakyat who was appointed on 14 May 2020.

[10] On 26 June 2020, the Prime Minister, YAB Tan Sri Muhyiddin bin Haji Muhammad Yassin (Tan Sri Muhyiddin) has submitted two motions to the then Speaker, YB Tan Sri Dato' Mohamad Ariff bin Md Yusof (Tan Sri Dato' Ariff) to be tabled in the second meeting of the third session of the 14th Parliament sitting on 13 July 2020 (the Parliament sitting):

(i) Removal of YB Tan Sri Dato' Ariff from his office as the Speaker; and

(ii) Removal of YB Nga Kor Ming from his office as the Deputy Speaker.

[11] The motion to vacate the post of the Speaker was accepted by YB Tan Sri Dato' Ariff and was tabled in the Parliament sitting and listed as Motion No. 2 in the order paper (Motion No. 2). Motion No. 2 reads as follows:

> Bahawa Dewan Rakyat ini mengambil ketetapan untuk Tuan Yang di-Pertua, Yang Berhormat Tan Sri Dato' Mohamad Ariff bin Md Yusof mengosongkan jawatannya atas alasan terdapat pencalonan lain bagi jawatan Tuan Yang di-Pertua.

[12] The motion to vacate the post of the Deputy Speaker was accepted by YB Tan Sri Dato' Ariff and was tabled in the Parliament sitting and listed as Motion No. 4 in the order paper (Motion No. 4). Motion No. 4 reads as follows:

> Bahawa Dewan Rakyat ini mengambil ketetapan untuk Timbalan Yang di-Pertua, Yang Berhormat Nga Kor Ming, Ahli Parlimen Teluk Intan mengosongkan jawatannya atas alasan terdapat pencalonan lain bagi jawatan Timbalan Tuan Yang di-Pertua.

[13] On 29 June 2020, YAB Tan Sri Muhyiddin has submitted two other motions to YB Tan Sri Dato' Ariff to be tabled in the Parliament sitting:

(i) Appointment of the first defendant as the new Speaker; and

(ii) Appointment of the second defendant as the new Deputy Speaker.

[14] The motion of nominating a candidate for the post of the Speaker was accepted by YB Tan Sri Dato' Ariff and was tabled in the Parliament sitting and listed as Motion No. 3 in the order paper (Motion No. 3). Motion No. 3 reads as follows:

> Saya mohon mencadangkan bahawa Yang Berbahagia Datuk Azhar bin Azizan @ Harun dipilih menjadi Tuan Yang di-Pertua Dewan Rakyat dan mengikut Peraturan Mesyuarat 4(1), Peraturan-Peraturan Majlis Mesyuarat Dewan Rakyat, saya telah memastikan bahawa beliau bersetuju untuk berkhidmat jika dipilih.

[15] The motion of nominating a candidate for the position of Deputy Speaker was accepted by YB Tan Sri Dato' Ariff and was tabled in the Parliament sitting and listed as Motion No. 5 in the order paper (Motion No. 5). Motion No. 5 reads as follows:

> Saya mohon mencadangkan bahawa Yang Berhormat Dato' Sri Azalina binti Othman Said, Ahli Parlimen Pengerang dipilih menjadi Timbalan Yang di-Pertua Dewan Rakyat dan mengikut Peraturan Mesyuarat 6(2) yang dibaca bersama Peraturan 4(1), Peraturan-Peraturan Majlis Mesyuarat Dewan Rakyat, saya telah memastikan bahawa beliau bersetuju untuk berkhidmat jika dipilih.

A **[16]** During the tabling of the Motion No. 2 on 13 July 2020, the Parliament sitting was presided by the third defendant. The Motion No. 2 was debated by the Members of Parliament and a vote was held. There were 111 votes in favour of the Motion No. 2 in contrast to 109 votes against the Motion No. 2 and thus the post of Speaker was vacated.

B **[17]** The third defendant then sought to proceed with the election of the new Speaker but several Members of Parliament raised point of order and demanded a 14-day period starting from 13 July 2020 as per SO 4(1) of the SODR to propose other candidate(s).

C **[18]** The third defendant however ruled that the election should proceed as Motion No. 3 has complied with SO 4(1) of the SODR. Being the sole candidate made pursuant to SO 4(1) of the SODR, the first defendant was proclaimed as the new Speaker.

[19] Following that and in accordance with the SO, the first defendant took
D his oath, and thereafter, took his place as the new Speaker of the Dewan Rakyat.

[20] Subsequently, the fourth defendant received a resignation letter from YB Nga Kor Ming informing that he wished to resign from his post as the Deputy Speaker of the Dewan Rakyat with immediate effect.

E **[21]** In light of YB Nga Kor Ming's resignation, the Motion No. 4 was withdrawn by YAB Tan Sri Muhyiddin.

[22] Due to the fact that there was a vacancy for the position of the Deputy Speaker, the Dewan Rakyat then continued with the Motion No. 5, ie, the
F election of the Deputy Speaker. YAB Tan Sri Muhyiddin has nominated the second defendant to be appointed as the Deputy Speaker. This motion was seconded by YB Dato' Seri Mohamed Azmin bin Ali.

[23] Being the sole candidate whose nomination was made pursuant to SO 6(2) of the SODR read together with SO 4(1) of the SODR, the second
G defendant was proclaimed as the new Deputy Speaker.

[24] On 23 July 2020, the plaintiffs filed an application by way of OS against the defendants essentially seeking to challenge the appointment of the first and second defendants as the Speaker and Deputy Speaker of the Dewan Rakyat.

H **[25]** On 7 August 2020, the first and third defendants filed an application to strike out the OS and likewise on 12 August 2020, the second and fourth defendants filed an application to strike out the OS.

I

[26] The defendants are seeking to strike out the OS for being scandalous, frivolous or vexatious and/or an abuse of process of the court under O. 18 r. 19(1)(b) and/or (d) of the ROC 2012 for the following reasons:

(i) The validity of the election process of the first and second defendants in the Dewan Rakyat cannot be questioned by this court pursuant to art. 63(1) of the FC; and

(ii) As such, the appointment of the first and second defendants as the Speaker and the Deputy Speaker cannot be invalidated by this court.

Contention Of Parties

[27] The plaintiffs submitted that the parliamentary privilege afforded by art. 63(1) of the FC is not absolute and subject to the power and/or jurisdiction provided for the Dewan Rakyat, whether or not it is inherent or expressly provided for.

[28] The plaintiffs are essentially saying that the Dewan Rakyat had, through its appointments of the first and second defendants as the Speaker and the Deputy Speaker, acted outside of the power or jurisdiction provided for it. This rendered the said appointments unconstitutional and unlawful, and therefore justifies judicial intervention in the Dewan Rakyat's decision.

[29] In support of their contention, the plaintiffs cited the following supporting authorities:

(i) *Yang Dipertua, Dewan Rakyat & Ors v. Gobind Singh Deo* [2014] 9 CLJ 577; [2014] 6 MLJ 812;

(ii) *Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun* [2016] 7 CLJ 143; [2016] 4 MLJ 661;

(iii) *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener)* [2009] 4 CLJ 253; [2009] 4 MLJ 24; and

(iv) *Kerins v. McGuinness* [2019] IESC 11.

[30] The defendants on the other hand contended that the validity of the election process of the first and second defendants in the Dewan Rakyat cannot be questioned by this court ie, the issues raised by the plaintiff in the OS are non-justiciable in light of art. 63 of the FC and as such the appointment of the first and second defendants as the Speaker and Deputy Speaker cannot be challenged by this court.

[31] In support of their contentions, the defendants relied on the following supporting authorities:

A (i) *Teng Chang Khim & Ors v. Dato' Raja lderis Raja Ahmad & Ors* [2014] 3 CLJ 173; [2014] 4 MLJ 12;

(ii) *Teng Chang Khim v. Badrul Hisham Abdullah & Anor* [2017] 9 CLJ 630; [2017] 5 MLJ 567;

B (iii) *The Speaker of Dewan Undangan Negeri of Sarawak "Datuk Amar Mohamad Asfia Awang Nassar" v. Ting Tiong Choon & Ors And Other Appeals* [2019] 2 CLJ 289; [2018] 2 SSLR 417; [2020] 2 MLRA 197;

(iv) *Lim Cho Hock v. Speaker, Perak State Legislative Assembly* [1979] 1 LNS 45; [1979] 2 MLJ 85;

C (v) *Fan Yew Teng v. Government of Malaysia* [1976] 1 LNS 28; [1976] 2 MLJ 262;

(vi) *Sivakumar Varatharaju Naidu v. Ganesan Retanam* [2009] 1 LNS 979; [2010] 7 MLJ 355; and

D (vii) *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener)* (s*upra*).

The Law

[32] The principles governing of striking out application are set out in E *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 1 MLRA 611; [1993] 3 MLJ 36; [1993] 2 AMR 1969 Mohamad Dzaiddin SCJ delivering the judgment of the then Supreme Court held as follows:

(1) The principles upon which the court acts in exercising its power F under any of the four limbs of O. 18 r. 19(1) of the Rules of the High Court 1980 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'.

G (2) So long as the pleadings disclose some course of action or raise some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to struck out.

(3) The principles upon which the court acts in exercising its power H under any of the four limbs of O. 18 r. 19 of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck & Sons Ltd v. Wilkinson, Heywood & Clark Ltd*)[7], and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously I

> unsustainable'(see *AG of Duchy of Lancaster v. L & NW Rly Co*[8]). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v. Moloney & Ors*[9]). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O. 33 r. 3 (which is in *pari materia* with our O. 33 r. 2 of the RHC) (see *Hubbuck & Sons Ltd v. Wilkinson, Heywood & Clark Ltd*[7]). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[33] Similarly in *Sivakumar Varatharaju Naidu v. Ganesan Retanam* [2010] 9 CLJ 825; [2010] 2 MLRA 693; [2011] 6 MLJ 70 Abdul Malik Ishak JCA (as he then was) held that:

> (1) The summary procedure under O. 18 r. 19 of the RHC should only be resorted to when it is conspicuously clear that the Plaintiff's claim, on the face of it, is obviously unsustainable. The court will only strike out a claim in plain and obvious cases and where the claim is obviously unsustainable. The power to strike out must be exercised by the court sparingly. It is a rule of thumb that if it can be shown that the pleadings do disclose some cause of action or that it has raised some question fit to be decided, then the case should be set down for argument notwithstanding that the chances of success are minimal. The pleadings must be entirely hopeless, baseless or without foundation in law or in equity before they can be struck out (see paras 13-17).

Findings Of The Court

[34] Having fully and carefully considered the plaintiffs' and the defendants' cases as well as all the issues raised in the plaintiffs' and defendants' submissions (oral and written), I now come to a decision as follows.

[35] In my opinion, there is only one issue which lies at the heart of this case. The issue is whether the appointment and/or election of the first and second defendants as Speaker and the Deputy Speaker on 13 July 2020 is valid under the law.

Whether The Validity Of The Appointment And/Or Election Process Of The First And Second Defendants As Speaker And The Deputy Speaker Can Be Questioned By The Court

[36] Upon careful perusal of the affidavits, SO of the SODR, authorities and written submissions filed by both parties, I am of the considered view that the appointment and the election process of the first and second defendants as the Speaker and the Deputy Speaker cannot be questioned by this court.

[37] I have perused the defendants' application in encls. 9 and 11, the plaintiffs' OS and the relevant affidavits filed by both sides. The defendants in their affidavits had stated that at the sitting of Dewan Rakyat on 13 July 2020, Motion No. 2 to remove YB Tan Sri Dato' Ariff and Motion No. 3 and No. 5 to appoint the first and second defendants as Speaker and the Deputy Speaker was tabled. The motion was passed by way of simple majority (111-109).

[38] It is also equally important to note that the plaintiffs' OS, the plaintiffs' affidavit in support for OS and the plaintiffs' written submission did not dispute that the said Motion No. 2, 3 and 5 was tabled and passed in the Dewan Rakyat by way of simple majority (111-109).

[39] What is disputed by the plaintiffs is that the election process of the first and second defendants as Speaker and the Deputy Speaker of the Dewan Rakyat was invalid.

[40] Having stated the above, I am of the view that the pleading (OS) and the affidavits evidence point to this: YB Tan Sri Dato' Ariff was removed from his office of Speaker by way of a resolution and/or motion carried out by the Dewan Rakyat. For another, at another stage of the said sitting of the Dewan Rakyat on that day the first and second defendants were elected to the office of Speaker and the Deputy Speaker by way of a motion that was brought and passed by the Dewan Rakyat.

[41] In my view, the removal of YB Tan Sri Dato' Ariff as the Speaker and the appointment and/or election of the first and second defendants as the new Speaker and the Deputy Speaker were part of the proceeding of the Dewan Rakyat on 13 July 2020.

[42] Article 63(1) of the FC provides:

> **63. Privileges of Parliament**
>
> (1) The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court.

[43] The effect of art. 63 of the FC has been discussed in a plethora of cases. The Federal Court in the case of *Teng Chang Khim v. Badrul Hisham Abdullah & Anor* [2017] 9 CLJ 630; [2017] 5 MLJ 567 at p. 637 (CLJ); p. 574 (MLJ) held as follows:

> [23] Thus, there can be no doubt that *the business of Parliament and State Legislative Assemblies are immune from judicial interference. The courts have no power to interfere with the internal management of Parliament or any State Legislative Assembly.* This immunity arises from the doctrine of separation of powers between the three principal organs of government, namely, the executive, the legislature and the judiciary.
>
> (emphasis added)

[44] Further, the Court of Appeal in *The Speaker of Dewan Undangan Negeri of Sarawak "Datuk Amar Mohamad Asfia Awang Nassar" v. Ting Tiong Choon & Ors And Other Appeals* [2019] 2 CLJ 289; [2018] 2 SSLR 417 at p. 352 (CLJ); p. 469 (SSLR) had stated:

> [197] What is noteworthy is the Federal Court recognising that this issue of justiciability of parliamentary privileges has been discussed fairly extensively in a line of cases starting with *Lim Cho Hock v. Speaker Perak State Legislative Assembly* [1979] 1 MLRH 241, and, *Fan Yew Teng v. Government of Malaysia* [1976] 1 MLRH 384. In Fan Yew Teng, the landmark decision of *Bradlaugh v. Gosset* (1884) 12 QBD 271 was cited and discussed, and I shall return to this shortly. Two further significant decisions of the Federal Court were also examined – *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener)* [2009] 1 MLRA 474); and *Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun* [2016] 5 MLRA 349.
>
> [198] The Federal Court examined these decisions together with several other English authorities, the intent, as I see it, is to take stock and establish whether the approach on this by no means simple issue; whether there is a necessary and material distinction drawn between the decisions taken in-house or outside the parameters of the House [whatever that term may connote] such that the parameters have to be properly and clearly demarcated; whether the approach and considerations thus far have to revisit.
>
> [199] After careful and deliberate examination of all those decisions, the Federal Court concluded in clear unequivocal terms that it was convinced that:
>
> > ... there can be no doubt that *the business of parliament and the state Legislative Assemblies are immune from judicial interference. The courts have no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of Government,* namely the executive, the legislature and the judiciary.
>
> [200] The view of the Federal Court is crystal clear – *the doctrine of separation of powers between the executive, legislative and the judiciary requires the business of and how parliament and the State Legislative Assemblies manage themselves in the conduct of their business, to be immune or protected from judicial interference. From this decision as well as the decisions examined by the Federal Court, it is apparent too that there is no change in the court's stance on this principle,* that this has always been the approach, and this is evident even in *Lim Cho Hock* and both decisions of *Fan Yew Teng v. Setia Usaha Dewan Ra'ayat & Ors* [1975] 1 MLRH 461, and *Fan Yew Teng v. Government of Malaysia*, although the Federal Court only referred to the latter of the two decisions. On the contrary, any attempt to revisit and reset the approach was turned down quite categorically and firmly by the Federal Court.
>
> (emphasis added)

[45] Further, the recent Federal Court case of *The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v. Ting Tiong Choon & Ors And Other Appeals* [2020] 3 CLJ 757; [2020] 2 MLRA 197 at p. 797 (CLJ); p. 222 (MLRA) held as follows:

> [84] *The effect of art 72(1) of the Federal Constitution on the decision by the Dewan to disqualify and remove the Respondent from the House is that the decision "shall not be questioned in any court". Thus, so long as the Dewan had acted within the limits of its power, the court would be in breach of art 72(1) of the Federal Constitution if it interfered with the exercise of that power.* The court is therefore barred from questioning the validity of the decision taken by the Dewan under art 19(1) of the Sarawak Constitution. The common law doctrine of separation of powers does not and cannot prevail over a constitutional provision like art 72(1) of the Federal Constitution.
>
> [85] *The moving of the Ministerial Motion to decide on the qualification of the respondent as a member of the Dewan, the attendant debate on the motion and the voting on the motion were all matters that came within the core business of the Dewan. The whole proceedings of the Dewan therefore attract privilege and must remain inviolable:* See *R v. Chaytor* [2011] 1 AC 684; *Teng Chang Kim* (*supra*); *Yang Dipertua Dewan Rakyat & Ors v. Gobind Singh Deo* [2014] 6 MLRA 466.
>
> (emphasis added)

[46] The plaintiffs submitted that although the business of the Dewan Rakyat is immune from judicial interference as provided by art. 63 of the FC, the court will have jurisdiction to intervene if the Dewan Rakyat act outside of or exceed its powers as provided under the FC.

[47] It looks like the plaintiffs derived the above principle from *YAB Dato' Dr Zambry* (*supra*) where the Federal Court held at p. 297 (CLJ); p. 59 (MLJ) as follows:

> **It follows that art 72(1) must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done.** The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issues raised by the applications are therefore justiciable.
>
> (emphasis added)

[48] In *YAB Dato' Dr Zambry*'s case (*supra*) the Federal Court had to consider whether there was any power to authorise the suspension of the applicants on account of the alleged contempt committed by them.

[49] It is pertinent to note that in the above case, the alleged contempt committed by the applicants that resulted in their suspension did not in fact arise within the walls of the Assembly but rather outside the Assembly.

[50] The Federal Court found that the State Legislative Assembly did not act within its power when it suspended the applicants for the reason that Perak Constitution read together with the Standing Orders of the Legislative Assembly and the Legislative Assembly (Privileges) Enactment 1959, did not provide for the offence of contempt and the punishment of suspension.

[51] The fact that Parliament must act within its constitutional and legal powers was further illustrated in the case of *Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun* (*supra*).

[52] In the above case, the plaintiff/respondent, an advocate and solicitor in acting upon instructions of his client, issued a letter of demand to the then Speaker of the State Legislative Assembly demanding the payment for the costs of a civil suit initiated by the plaintiff's client against the then Speaker. The letter of demand was brought to the attention of the State Legislative Assembly which then passed as motion resolving that the plaintiff and his client be referred to the Committee of Rights and Privileges on a charge of contempt.

[53] The Secretary of the Committee issued a summons against the plaintiff to appear before the Committee and explain the alleged contempt. The plaintiff then filed an originating summons on the grounds, among others, that the summons issued by the Secretary of the Committee violated the FC and the Selangor State Constitution and was therefore unconstitutional.

[54] The High Court found that resolution prescribing the alleged contempt and referring the plaintiff to the Committee was unconstitutional, being *ultra vires* the Schedule of the Selangor State Constitution and the Standing Orders of the Assembly made pursuant to the Selangor State Constitution. The decision was upheld by the Federal Court on the ground that no provision had been made to provide for the offence of contempt which the plaintiff was charged.

[55] The Federal Court at p. 161 (CLJ); p. 680 (MLJ) held as follows:

> [46] As regards this appeal, it is our judgment *the assembly must act within its constitutional and legal powers before the protection provided for by art 72(1) can arise, before passing a resolution of an act of contempt having been committed beyond the walls of the assembly. The assembly's powers are limited by the Selangor State Constitution.* The Selangor State Constitution expressly provides in art LXXVll as follows:
>
> > The Legislative Assembly shall have the privileges and powers set out in the Schedule thereto.

A [47] A careful perusal of the provisions *of the Schedule in the Selangor State Constitution, which confers the power and privileges of the assembly, reveal no provision that provides for contempt committed outside the legislative assembly. The Defendants too have failed to show which provision in the schedule was relied on to pass the resolution. The assembly has therefore exceeded the jurisdiction provided for in the Schedule.*

B [48] We also note in the present case that the standing orders of the assembly and the Contempt of the House Enactment reveals no provision prescribing for contempt committed beyond the walls of the assembly. In the circumstances, it is our considered view that *the resolution prescribing the alleged contempt and to refer the Plaintiff to the committee of privileges is*
C *unconstitutional, being ultra vires the Schedule of the Selangor States Constitution and the standing orders of the assembly, made pursuant to art IXXVII.*

(emphasis added)

[56] Applying the principle of law in the above cases to the facts in the present case, I am of the view that the court is empowered to ascertain
D whether a particular power that has been claimed has in fact been provided for.

[57] In our case, art. 57 of the FC expressly provides that it is the Parliament which determines the removal and election of the Speaker and Deputy Speaker. Article 57(1) states:

E **Speaker and Deputy Speakers of the House of Representatives**

57(1) The House of Representatives shall from time to time elect:

(a) as Yang di-Pertua Dewan Rakyat (Speaker), a person who either is a member of the House or is qualified for election as such a member;
F and

(b) two Deputy Speakers from among members of the House.

and the House shall, subject to Clause (3); transact no business while the office of Speaker is vacant other than the election of a Speaker.

G (2) **The Speaker may at any time resign his office** by writing under his hand addressed to the Clerk of the House of Representative, **and shall vacate his office:**

(a) when the House first meets after a general election;

H (b) on his ceasing to be a member of the House otherwise than by reason of a dissolution thereof or, if he is a member by virtue only of paragraph (b) of Clause (1A), on his ceasing to be qualified to be a member;

(bb) upon being disqualified under Clause (5);

I (c) **if the House at any time so resolves.**

(2A) **A Deputy Speaker may at any time resign his office** by writing under his hand addressed to the Clerk of the House of Representative, and **shall vacate his office:**

(a) on his ceasing to be a member of the House;

(b) **if the House at any time resolves.**

(emphasis added)

[58] From the above, it is clear that the Parliament has the power or jurisdiction to elect and/or to dismiss the Speaker and the Deputy Speaker. Hence, the validation of such appointment/dismissal is not within the court's jurisdiction.

[59] It is well-settled that the validity of any proceeding in the Parliament and the Legislative Assembly is not justiciable. The court has no jurisdiction to adjudicate upon the matter. (see *Lim Cho Hock v. Speaker, Perak State Legislative Assembly* [1979] 1 LNS 45; [1979] 2 MLJ 85; *Tun Datu Hj Mustapha Datu Harun v. Legislative Assembly of State of Sabah & Ors* [1985] 1 LNS 750; [1986] 2 MLJ 388; *Fan Yew Teng v. Government of Malaysia* [1976] 1 LNS 28; [1976] 2 MLJ 262; *Bradlaugh v. Gossett* (1884) 12 QBD 271); *The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v. Ting Tiong Choon & Ors And Other Appeals* [2020] 3 CLJ 757; [2018] 2 SSLR 417; [2020] 2 MLRA 197; and *Teng Chang Khim v. Badrul Hisham Abdullah & Anor* [2017] 9 CLJ 630; [2017] 5 MLJ 567.

[60] Applying the foregoing principles to the present case, this court cannot interfere with what has been decided by the Parliament on 13 July 2020 which includes the resolution by the Parliament to remove YB Tan Sri Dato' Ariff as Speaker and to elect first and second defendants as the new Speaker and the Deputy Speaker. Article 63(1) of the FC prevents this court from examining the matters involving the course of the proceedings of the Parliament on 13 July 2020 given that the Parliament has the power or jurisdiction to elect and/or to dismiss the Speaker.

[61] Further, I view that any kind of matter and/or issues concerning the removal and the appointment of the Speaker and the Deputy Speaker ought to be examined, discussed and resolved in the Parliament. The Parliament has exclusive jurisdiction over the matter and it has the absolute right to control its own proceedings. Indeed, the decision of the Parliament on 13 July 2020 to remove YB Tan Sri Dato' Ariff as the Speaker and to appoint the first and second defendants as the new Speaker and the Deputy Speaker is conclusive.

[62] As I see it, the matter has been determined by the Parliament on 13 July 2020. Therefore, the court is not allowed to question the validity of the said proceeding in pursuant of art. 63(1) of the FC.

[63] Therefore, I have to disagree with the submission of learned counsel for the plaintiffs which reiterates that the proceeding on 13 July 2020 has not been finally determined as to whom the lawful Speaker and the Deputy Speaker of the Parliament.

[64] I came to this conclusion by referring to the case of *Sivakumar Varatharaju Naidu v. Ganesan Retanam* [2009] 1 LNS 979; [2010] 7 MLJ 355, the facts of the case is quite similar to our present case.

[65] In *Sivakumar* (*supra*) His Lordship Justice Azahar Mohamed J (now Chief Judge of Malaya) held that the removal and the appointment of the Speaker was within the power or jurisdiction of the State Assembly and not the courts. The issue of the validity of the appointment of Speaker was therefore non-justiciable.

[66] His Lordship at pp. 366 to 368 (MLJ) held as follows:

> [19] ... In my view, the removal of the Plaintiff as the Speaker and the appointment of the Defendant as the new Speaker were part of the proceeding of the Legislative Assembly on 7 May 2009.
>
> ...
>
> [23] It is well settled that the validity of any proceeding in the Legislative Assembly is not justiciable. The court has no jurisdiction to adjudicate upon the matter ...
>
> [24] Applying the foregoing principles to the present case, this court cannot interfere with what has been decided by the Legislative Assembly on 7 May 2009, which includes the resolution by the assembly to remove the Plaintiff as Speaker and to elect the Defendant as the new Speaker. Article 72(1) of the Federal Constitution prevents this court from examining the matters that took in the course of the proceedings of the Legislative assembly on 7 May 2009 given that the Legislative Assembly has the power or jurisdiction to elect and/or dismiss the Speaker. *Whatever matter concerning the removal and the appointment of the Speaker ought to be examined, discussed and resolved in the Legislative Assembly. The Legislative Assembly has exclusive jurisdiction over the matter and it has the absolute right to control its own proceedings.* Indeed, the decision of the Legislative Assembly on 7 May 2009 to remove the Plaintiff as the Speaker and to appoint the Defendant as the new Speaker is conclusive. The matter has been determined by the Legislative assembly on 7 May 2009. *To question the validity of the removal of the Plaintiff as the Speaker and the appointment of the Defendant as the Speaker is to question the validity of the proceeding of the assembly. This cannot be done by virtue of art 72(1) of the Federal Constitution.* That is why I am unable to agree with the submission of learned counsel for the Plaintiff that the proceeding on 7 May 2009 has not been finally determined as to whom the lawful Speaker of the Legislative Assembly is. With respect, to agree to the stand taken by learned counsel for the

> Plaintiff would go against the privilege and immunity principle of the Legislative Assembly which has been constitutionally entrenched in art 72 of the Federal Constitution.
>
> [25] To my mind, *the resolutions to dismiss the Plaintiff as Speaker and to appoint the Defendant as the new Speaker have determined who the valid Speaker is and it is conclusive in the sense that this is what the Legislative Assembly decided on that day*. (emphasis added)

[67] From the above case, the High Court has stated explicitly its lack of jurisdiction to adjudicate upon the Legislative Assembly's decision in removing and electing a Speaker. The Court of Appeal had reaffirmed the High Court's decision. (see S*ivakumar Varatharaju Naidu v. Ganesan Retanam* [2010] 9 CLJ 825; [2011] 6 MLJ 70).

[68] Premised on the reasons enumerated above, I am of the considered opinion that this court has no jurisdiction over the validity of the Parliamentary proceedings.

[69] Notwithstanding with what have been stated above, for completeness purposes, I shall nevertheless delve into the issue of whether the defendants had acted within the power conferred on them by the FC and SODR as raised by the plaintiffs.

Whether The Defendants Had Acted Within The Power Conferred On Them By The FC And SODR

[70] I have perused over the cause papers and the submissions (written and oral) of parties, I find that the plaintiffs had raised the followings:

(i) that the requirement of giving 14 days' notice pursuant to SO 4(1) commences from the date the seat became vacant;

(ii) that the plaintiffs allegedly were not given the opportunity to propose their own candidates for the seats of the Speaker and the Deputy Speaker during the 14-days period; and

(iii) the appointment of the first defendant as the Speaker and the second defendant as the Deputy Speaker were invalid.

[71] The plaintiffs complain that the vacancy in the office of the Speaker only arises when YB Tan Sri Dato' Ariff has been removed on 13 July 2020. Therefore, the Dewan Rakyat needs to proceed to elect a Speaker under SO 3 of the SODR. Following this, pursuant to SO 4(1) of the SODR, the plaintiffs were entitled to propose a person for such election.

[72] It is to be noted that SO 4(1) and 6(2) of the SODR provide for the election of a Speaker. An election of the Speaker is not necessarily contingent on the vacancy of the office. The Dewan Rakyat may choose to remove and replace a Speaker whilst in office.

[73] SO 4(1) and 6(2) of the SODR read as follows:

> 4. The procedure for the election of a Yang di-Pertua shall be as follows:
>
> (1) Every member who wishes to propose a person who is either a member of the House or is qualified for election as such for election as Yang di-Pertua shall ascertain previously that, that member is willing to serve if elected, and shall notify the Setiausaha of his proposal in writing at least fourteen days before the meeting.
>
> 6 (2) The procedure for the election of a Timbalan Yang di-Pertua shall be, as nearly as may be, the same as that the election of a Tuan Yang di-Pertua, save that the election shall be conducted by Tuan Yang di-Pertua.

[74] The plain and ordinary meaning of SO 4 and 6 of the SODR is that it sets out the procedure for an election, whether or not there has been a vacancy in the office.

[75] Upon perusal of the FC, SO of the SODR and relevant cause papers, I am of the view that the Dewan Rakyat as well as the first and third defendants had acted within the powers conferred on them by the FC and the SODR based on the following reasons:

(i) Motions No. 2 and 4 were submitted by YAB Tan Sri Muhyiddin to the Secretary in writing within the time period imposed by standing order no. 27(3) of the SODR.

> 27(1) Where under any Standing Order (or the practice of the House) notice is required such notice shall be sent to the Setiausaha in writing during the usual office hours.
>
> ...
>
> (3) Except as provided in Standing Order 43 and in paragraph (5) of Standing Order 86 and 26(1), not less than fourteen days notice of any motion shall be given unless it is in the name of a Minister, in which case seven days' notice or, if Tuan Yang di-Pertua is satisfied upon representation to him by a Minister that the public interest requires that a motion should be debated as soon as possible, one day's notice shall be sufficient.

(ii) These motions were accepted by YB Tan Sri Dato' Ariff and placed on the order paper. The acceptance of these motions were made public by the media.

(iii) Motions No. 3 and 5 were submitted by YAB Tan Sri Muhyiddin to the Secretary in writing within the time period imposed by SO 4(1) of the SODR.

(iv) The first and second defendants being the sole candidate whose nomination was made pursuant to SO 4(1) and 6(2) of the SODR shall be declared without question put pursuant to SO 4(3) of the SODR. Therefore, the third defendant's decision to declare the first defendant as the Speaker, and the first defendant's decision to declare the second defendant as the Deputy Speaker without debate were lawful.

Standing Order 4(3)

4(3) If only one member or person be so proposed and seconded as Yang di-Pertua, he shall be declared by the Setiausaha without question put, to have been elected. If more than one member or person be so proposed and seconded the House shall proceed to elect a Yang di-Pertua by ballot.

(v) The above chronology of events had occurred as a result of the interpretation and ruling made by the third defendant in the election of the first defendant and the first defendant in the election of the second defendant.

[76] I am of the view that the third defendant had acted within the powers conferred upon him at all material times. The third defendant had the right to exercise all the powers of a Speaker pursuant to art. 57(3) of the FC and SO 7(2) of the SODR.

[77] Therefore, all decisions and rulings made by the third defendant during the Parliament sitting were final and shall not open to appeal in pursuant to SO 43 and 99 of the SODR.

Rulings of Tuan Yang di-Pertua

99. The decision of Tuan Yang di-Pertua upon any point of interpretation of any of these Standing Orders, or upon any matter of practice, shall, subject to a substantive motion moved for that purpose, be final, and Tuan Yang di-Pertua may from time to time issue rulings thereon.

[78] Based on SO 99, it is clear that the issue of whether or not the nomination of candidates for the Speaker's and Deputy Speaker's seats is contingent on their pre-existing vacancy is one of interpretation. In my view, the power to interpret the SODR falls on the Speaker and his interpretation shall be final.

[79] In the instant case, it is not disputed that Motions No. 2, 3, 4 and 5 had been accepted by the then Speaker, YB Tan Sri Dato' Ariff. At all material times, the right to refuse to table a motion in the Parliament sitting lied with YB Tan Sri Dato' Ariff pursuant to SO 27(5)(b) of the SODR. YB Tan Sri Dato' Ariff's approval for the motions to be tabled in the Parliament sitting implies that he has interpreted pre-existing vacancy as being necessary.

[80] Thus, it is my view that YB Tan Sri Dato' Ariff's interpretation shall be treated as final as no substantive motion has been moved to challenge such interpretation.

[81] This has also been stated by the Federal Court in the case of *Teng Chang Khim* [2014] (*supra*) whereby it was held that the construction and employment of the SO are within the exclusive jurisdiction of Parliament.

[82] At p. 228-229 (CLJ); p. 55 (MLJ) the Federal Court held as follows:

> [70] We are of the view that the remarks by Lord Morris in *Pickin* with regard to *the extent and exclusivity of the Parliamentary power over the construction and employment of the Standing Orders are applicable to the present case in the determination of the effect of the relevant Standing Orders with regard to the establishment of SELCAT*, and the power of the SLA on the application or otherwise of those Standing Orders. Indeed, *Standing Order 87 provides that the decision of the Speaker of the SLA upon any point of interpretation of any of the Standing Order or upon any matter of practice, shall, subject to a substantive motion moved in the SLA for that purpose, be final:*
>
> > The decision of Mr Speaker upon any point of interpretation of any of these Standing Orders, or upon any matter of practice, shall subject to a substantive motion moved for that purpose, be final, and Mr Speaker may from time to time issue rulings thereon.
> >
> > (emphasis added)

[83] Based on the above, I find that the FC and the internal mechanism within the SODR have removed this court the jurisdiction to decide on any matter that concerns parliamentary proceedings and the Parliament is the ultimate arbiter of any proceedings in Parliament.

[84] Notwithstanding the above, I am of the considered opinion that whether or not the Speaker's ruling was made in accordance with the SODR, it will not amount to a non-abiding with the order of business nor can it be declared invalid.

[85] I find support for my view by referring to the SO 99A which states as follows:

> **Failure to comply with Standing Orders does not nullify proceedings or decision**
>
> 99A. Where in making any decision, there has been a failure on the part of the House or any Committee thereof to comply with any provision of the Standing Order in the proceeding leading to the decision, such failure shall be treated as an irregularity and shall not nullify the proceedings or the decision resulting therefrom.

[86] Having regard to the circumstances of the present case, I do not think it is right to let it go to trial due to the fact I have no reason to believe that the plaintiffs going by their own pleading (OS), will be able to do so in a trial of the action.

[87] It is accurate to say that the power to dismiss an action summarily under O. 18 r. 19 of the ROC 2012 is a drastic one. Undeniably, it should be exercised with great caution. In a plain and obvious case when it is conspicuously clear that the claim on the face of it is obviously unsustainable, the court will no doubt but to exercise its discretion in striking out an action (see *Bandar Builder Sdn Bhd* (*supra*)).

Conclusion

[88] Having considered the plaintiffs' pleading, the affidavits and the arguments of both sides and having given the matter the utmost careful consideration, in my view the present case comes within the category of plain and obvious case as envisaged in the case of *Bandar Builder Sdn Bhd* (*supra*) for the reason that the OS is frivolous and vexatious and an abuse of the process of the court. The action has no prospect to succeed.

[89] In view of the reasons above, the court hold that:

(i) the first and third defendants' SO application in encl. 9 to strike out OS (encl. 1) is allowed;

(ii) the second and fourth defendants' SO application in encl. 11 to strike out OS (encl. 1) is allowed; and

(iii) as consequence, encl. 1 is struck out with no order as to costs.